United Nations A/AC.86/XLIII/PV.2

General Assembly

Official Records

Committee on Applications for Review of Administrative Tribunal Judgements

2nd Meeting
Thursday, 16 June 1994, 10.30 a.m.
New York

Chairman: Ms. Flores . . . . . (Uruguay)

The meeting was called to order at 10.50 a.m.

The Chairman ***(interpretation from Spanish):*** The present public meeting of the Committee on Applications for Review of Administrative Tribunal Judgements has been convened pursuant to paragraph 4 of article VIII of the rules of procedure of the Committee (A/AC.86/2/Rev.4). That paragraph provides as follows:

> "The decisions of the Committee and the text of any questions to be addressed to the International Court of Justice, as well as the results of and the participants in any votes taken during the private deliberations, shall be formally announced in a public meeting, at which any member of the Committee may make a statement for the record".

At the current session the Committee considered applications for review of the following Administrative Tribunal Judgements: application of Mr. Araim for a review of Administrative Tribunal Judgement No. 622; application of Mr. Kofi for a review of Administrative Tribunal Judgement No. 630; application of Ms. Mughir for a review of Administrative Tribunal Judgement No. 632; and application of Mr. Shkukani for a review of Administrative Tribunal Judgement No. 628.

The Committee on Applications for Review of Administrative Tribunal Judgements considered the applications of Mr. Araim, Mr. Kofi, Ms. Mughir and Mr. Shkukani at its closed meeting held on 14 June 1994.

Having examined the application of Mr. Araim, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 622 delivered by the United Nations Administrative Tribunal in the case of *Araim against the Secretary-General of the United Nations*.

Does any member of the Committee wish to make a statement for the record?

Mr. Aboulmagd (Egypt): I wish to make a few remarks regarding application number 89, *Araim against the Secretary-General of the United Nations*. My delegation could not see in the case at hand sufficient grounds within the scope of article 11 of the Statute of the Tribunal warranting submission of the case to the International Court of Justice as requested by the Applicant. We reached that conclusion since there was no clear indication that the Tribunal had failed to exercise jurisdiction, was in excess of jurisdiction, or was in error of procedure which resulted in a failure of justice. Nevertheless, in the light of the grave nature of the allegations of discrimination involved in this case, my delegation is compelled to make the following remarks concerning the Judgement of the Tribunal.

We strongly believe that all claims of discrimination, in whatever form, should be considered with utmost care and concern, commensurate with the extremely serious nature of this crime. The crime of discrimination has the notorious ability to be disguised

94-85771 (E)

This record contains the original texts of speeches delivered in English and interpretations of speeches delivered in the other languages. Corrections should be submitted to original speeches only. They should be incorporated in a copy of the record and be sent under the signature of a member of the delegation concerned, *within one week of the date of publication*, to the Chief of the Verbatim Reporting Section, room C-178. Corrections will be issued after the end of the session in a consolidated corrigendum.

behind rational, legitimate reasoning, veiling its truly ugly face, thus sometimes rendering it virtually impossible to substantiate and prove. This unique characteristic of discrimination should be taken into consideration when any body, be it judicial, quasi-judicial or otherwise, is addressing itself to allegations of discrimination. This should be the case even more so within the United Nations, the Organization looked to world-wide to uphold and advance all causes of human rights.

It is in that light, and in particular in the light of the need to ensure the non-existence or elimination of any form of discrimination that may exist, that we are now making these comments. We believe that the Tribunal could have detected a link between the two claims of the Applicant, the first of which regarded the non-announcement of the vacancy and the second discrimination. The Tribunal, in awarding $2,000 in compensation for the non-announcement of the vacancy, stated that

> "The sequence and timing of the events in this case lead the Tribunal to conclude that the temporary appointment of the external candidate was prearranged, without any proper consideration having been given to advertising the post". *(AT/DEC/622, p. 12)*

The Tribunal further stated that,

> "In short, neither the Applicant nor anyone other than the external candidate was given any, much less adequate, consideration, and the Applicant was injured by that irregularity. For that injury he is entitled to compensation". *(AT/DEC/622, p. 13)*

These irregularities, and the conclusion of the Tribunal that the temporary appointment of the external candidate was prearranged, when combined with the findings of the investigator from the Panel on Discrimination and Other Grievances (PDOG), Mr. John Adam, as set out on page 5 of the application, and the findings of the interim coordinator, Mr. Willard Hass, also set out on page 5 of the application, as well as the discriminatory comments allegedly made by the then Assistant Secretary-General for the Centre against Apartheid (CAA) regarding his concern for geographical balance in the senior staff of the CAA, and that he did not want three Arab staff members at the D-1 level, should have served as a warning-light that a form of discrimination, albeit subtle, may have existed, thus warranting in-depth consideration to verify beyond any doubt whether or not such discrimination existed.

Unfortunately, the Judgement of the Tribunal leads us to believe that in reaching its conclusion to reject Applicant's claim of discrimination the Tribunal found it sufficient to express its concurrence with the findings of the Joint Appeals Board, and to rely to some extent in reaching that conclusion on an *ad hoc* report submitted by the Respondent.

The Tribunal, without expressing its reasons for so doing, chose to ignore the findings of the PDOG, despite its previously having supported and upheld the findings of the PDOG in the Upadhya case, Judgement No. 401, and having also invited staff members to submit their grievances to the PDOG. We believe that a diversion of the Tribunal from its previous attitude towards findings of the PDOG warranted a substantive and reasoned explanation.

One further matter that gave some concern to this delegation relates to paragraph 17 of the application, which points to a recommendation to relocate the Applicant after 15 years of apparently satisfactory service in the CAA to another duty station. Such actions, if substantiated, can be of serious consequence to the whole administration-of-justice system in the United Nations, and represent a negative signal and strong deterrent to staff members from adjudicating against the Administration.

Our sincere hope is that there is no link whatsoever between this or any other case and the decision to relocate the Applicant.

The Chairman *(interpretation from Spanish)*: Having examined the application of Mr. Kofi, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 630 delivered by the United Nations Administrative Tribunal in the case of *Kofi against the Secretary-General of the United Nations*.

With reference to the Applicant's request that the Committee send the case back to the Tribunal, the members of the Committee noted that this request did not fall within the Committee's mandate.

If no other no member of the Committee wishes to make a statement for the record, we turn now to the application of Ms. Mughir.

Having examined the application of Ms. Mughir, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 632 delivered by the United Nations Administrative Tribunal in the case of *Mughir against the Secretary-General of the United Nations*.

If no member of the Committee wishes to make a statement for the record, we turn next to the application of Mr. Shkukani.

Having examined the application of Mr. Shkukani, the Committee decided without a vote that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 628 delivered by the United Nations Administrative Tribunal in the case of *Shkukani against the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*.

With reference to the Applicant's other requests, the members of the Committee noted that these requests were not within the Committee's mandate.

Unless any member of the Committee wishes to make a statement for the record, that concludes the work of the Committee on Applications for Review of Administrative Tribunal Judgements at its forty-third session.

The meeting rose at 11 a.m.